

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Federal Trade Commission

v.

Civil No. 04-377-JD

Seismic Entertainment
Productions, Inc., et al.

TEMPORARY INJUNCTION ORDER

Plaintiff Federal Trade Commission ("FTC") has filed its Complaint for Injunctive and Other Equitable Relief and moved for a noticed temporary restraining order with other equitable relief against defendants Seismic Entertainment Productions, Inc., SmartBot.Net, Inc., and Sanford Wallace. The court has considered the pleadings, declarations, and exhibits filed in support of and opposing the motion, along with the arguments of counsel presented at a hearing held on October 15, 2004. For the reasons stated in the accompanying order also issued today, granting, in part, the FTC's motion, temporary injunctive relief is ordered as follows:

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. "Seismic" means Seismic Entertainment Productions, Inc., a New Hampshire corporation with its principal place of business at 11 Farmington Road, Rochester, New Hampshire 03867.

2. "SmartBot" means SmartBot.Net, Inc., a Pennsylvania corporation with its corporate address at 3 Cobblestone Court, Richboro, Pennsylvania 18954, and its principal place of business at 495 Route 9, Barrington, New Hampshire 03825.

3. "Wallace" means Sanford Wallace, individually and as an officer and director of Seismic, and as an officer and director of SmartBot.

4. "Defendants" means Seismic, SmartBot, Wallace, and each of their successors, assigns, officers, agents, servants, employees, salespersons, subsidiaries or affiliates.

5. The "World Wide Web" or the "Web" is a system used on the Internet for cross-referencing and retrieving information. Documents ("pages" or "sites") on the World Wide Web are most frequently formatted in a language called HTML or HyperText Markup Language, that supports links to other documents on the World Wide Web.

6. A "web site" is a single electronic document on the

World Wide Web, readily viewable on a computer with access to the Web and standard Internet browser software. Every web page on the World Wide Web is identified by a globally unique address.

8. A "web browser" is a software application used to view, download, upload, surf, or otherwise access documents ("pages" or "sites") on the World Wide Web. Web browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a web page or web site. A user may retrieve and view a web page or site by entering the Uniform Resource Locator ("URL") or domain name of the web page in the address bar of the web browser.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that the defendants, and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this order by personal service or otherwise, including by facsimile, whether acting directly or through any corporation, subsidiary, division or other device are hereby required to remove, within twenty-four (24) hours, from any web site, bulletin board, or Internet server

controlled by defendants any software script that exploits the web browser security vulnerabilities referenced in Microsoft Bulletins MS03-032 and MS03-040 or any other web browser security vulnerabilities to install, download, or deposit onto any computer any software code, program, or content, without the computer user's authorization.

MAINTENANCE OF RECORDS

II.

IT IS FURTHER ORDERED that the defendants, and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this order by personal service or otherwise, including by facsimile, whether acting directly or through any corporation, subsidiary, division or other device, are hereby enjoined from:

1. failing to create and maintain books, records, account, bank statements, current accountants' reports, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the defendants;

2. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly

or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements (including but not limited to advertisements placed on the World Wide Web or the Internet), brochures, manuals, electronically stored data (including but not limited to floppy disks and hard drives, CD-ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to reach any such material, FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, contracts, accounting data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, and other documents or records of any kind that relate to the business practices or finances of the defendants;

3. failing to maintain complete records of any consumer complaints and disputes, whether coming from the consumer or any intermediary, such as a government agency or Better Business Bureau, and any responses made to those complaints or disputes.

4. creating, operating, or exercising any control over any Internet and/or advertising-related business entity, including, but not limited to, any partnership, limited partnership, joint

venture, sole proprietorship, international business corporation or any other corporation, without first providing the Commission with a written statement disclosing (a) the name of the business entity; (b) the address and telephone number of the business entity; (c) the names of the business entity's officers, directors, principals, managers, and employees; and (d) a detailed description of the business entity's intended activities; and

5. creating, operating, or exercising any control over any web site, FTP site, bulletin board, or Internet serve without first providing the FTC a written statement disclosing: (a) its domain name; (b) its IP address; (c) its Host or Host Company, including contact information; and (d) the uniform resource locator ("URL") for each resource, page, or file contained in it.

SERVICE OF THIS ORDER BY PLAINTIFF

III.

IT IS FURTHER ORDERED that copies of this order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC or any state or federal law enforcement agency, on (1) any defendant in this action; (2) any financial or brokerage institution, entity, or person that holds, controls, or maintains custody of any account

or asset of the defendants; (3) any Internet service provider, Host, Host company, or other entity that provides Internet related services to defendants; or (4) any other person or entity that may be subject to any provision of this order. Service upon any branch or office of any entity shall effect service upon the entire entity.

DURATION

IV.

IT IS FURTHER ORDERED that the temporary injunctive relief ordered herein shall continue until the court issues an order granting or denying the FTC's motion for a preliminary injunction, unless, for good cause shown, the relief ordered is terminated at an earlier time.

SO ORDERED.

A handwritten signature in black ink, reading "Joseph A. DiClerico, Jr.", is written over a horizontal line.

Joseph A. DiClerico, Jr.
United States District Judge

October 21, 2004

cc: T. David Plourde, Esquire
Laura M. Sullivan, Esquire
Ralph A. Jacobs, Esquire